In the High Court of Judicature at Madras

Dated:04.04.2005

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Habeas Corpus Petition No.1231 of 2004

..

Bepari Saleem .. Petitioner

vs.

1. The State of Tamil Nadu rep. By its
   Secretary to Government
   Public (SC) Department
   Fort St. George, Chennai 9.

2. The Union of India rep. By its
   Secretary, Ministry of Finance
   Department of Revenue
   (COFEPOSA Unit)
   Central Economic Intelligence Bureau
   Janpath Bhavan, Janpath
   New Delhi 110 001.

3. The Superintendent of Central Prison
   Central Prison, Chennai 3. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying of the issuance of a writ of Habeas Corpus calling for the records relating to the detention order in G.O.No. SR.I/1075-4/2004, Public (SC), Department dated 03.09.2004 passed by the first respondent, quashing the same and directing the respondents to produce the body of the person of the detenu, Bepari Saleem, son of Bepari Rasheed, now detained in the Central Prison, Chennai as COFEPOSA detenu, before this Honourable Court and set him at liberty.

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For petitioner : Mr. K.A. Jabbar

For respondents: Mr. A. Kandasamy
Addl. Public Prosecutor for R.1&3

Mrs. Vanathi Srinivasan
Addl. Central Govt., standing
counsel for R2.

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ORDER

(Order of the Court was made by P. SATHASIVAM,J.,)

The detenu, by name, Bepari Saleem, challenges the impugned detention order dated 03.09.2004, detaining him under Section 3 (1) (i) of the Conservation of Foreign Exchange and Smuggling Activities Act, 1974, (in short "COFEPOSA Act").

2. Heard the learned counsel for the petitioner as well as respondents.

3. Though several points have been raised questioning the impugned detention order, the learned counsel appearing for the petitioner has pressed the following points at the foremost.

> "(i) The detenu was not supplied with the copy of the remand order dated 02.09.2004, in the language known to him within the prescribed time. The belated supply of the relevant and relied on document vitiates the detention order; and
>
> (ii) The retraction letter dated 27.08.2004 was neither considered by the detaining authority, nor the same was placed before the Advisory Board. On this ground also the detention order is liable to be quashed. "

4. Coming to the first contention, it is not in dispute that the detenu was arrested on 16.08.2004 and remanded till 30.08.2004. On 30.08.2004, since the detenu was not produced, the learned Magistrate passed an order for production of the detenu on 13.09.2004. It is further seen that on 02.09.2004, the detenu was produced and the remand was extended till 13.09.2004. It is the grievance of the detenu that though he was supplied with the copy of the order dated 30.08.2004 both in English and Telugu language, the order dated 02.09.2004, by which the learned Magistrate extended the remand till 13.09.2004 has been supplied only on 20.10.2004. In this regard, the learned counsel appearing for the petitioner by relying on the judgment of the Supreme Court in the case of Ibrahim Ahmad Batti @ Mohd. Akhtar Hussain @ Kadar Ahmed Wagher @ Iqbal @ Gulam vs. State of Gujarat and others reported in 1983 S.C.C. (Cri) 66, would contend that it is mandatory on the part of the detaining authority to serve copies of all documents, statements and other materials incorporated in the grounds on which the detaining authority has relied under Article 22 (5) of the Constitution of India read with Section 3(3) of COFEPOSA Act to the detenu within the prescribed time.

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5. The learned Additional Public Prosecutor would submit that since the detenu was supplied with the copy of the order dated 30.08.2004, directing the production of the detenu by 13.09.2004 and the copy of the order dated 02.09.2004, extending the remand till 13.09.2004 has also been supplied to the detenu on 20.10.2004, he has not been prejudiced in any way. It is relevant to note that in Para 1 (xi) of the grounds of detention it is stated that the detaining authority was aware of the fact that remand period expired on 30.08.2004 and as no escort was provided on that day, the detenu was not produced before the Court. Therefore, the Additional Chief Metropolitan Magistrate, E.O. II, Chennai posted the matter on 13.09.2004 for production of the detenu. Later on, the detenu was produced before him on 02.09.2004 and his remand period was extended till 13.09.2004. As rightly argued, the above referred statement makes it clear that the detaining authority was conscious of the fact that the detenu was produced before the Magistrate on 02.09.2004 and an order has been passed by the learned Magistrate extending the remand period till 13.09.2004. In this regard, the following conclusion in para 8 of the judgment in Ibrahim Ahmad Batti case (cited supra) is relevant.

> "8. ..... It would thus follow that if the grounds together with copies of all documents, statements and other materials incorporated in the grounds by reference on which the detaining authority has relied are require to be communicated to the detenu under Article 22(5) read with Section 3(3) of COFEPOSA within the prescribed time then not merely the grounds of detention but also the copies of all incorporated documents, statements and other materials must be supplied to the detenu in a script or language which he understands and failure to do so would amount to a breach of the mandate contained in Article 22 (5) read with Section 3(3) of COFEPOSA. "

Again in para 10 it is stated,

> "10. Two propositions having a bearing on the points at issue in the case before us, clearly emerge from the aforesaid resume of decided cases: (a) all documents, statements and other materials incorporated in the grounds by reference and which have influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detenu along with the grounds or in any

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> event not later than five days ordinarily and in the exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of his detention, and (b) all such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to breach of the two duties cast on the detaining authority under Article 22 (5) of the Constitution. .... "

6. It is clear from the dictum laid down by their Lordships, the remand extension order dated 02.09.2004, having been relied on and considered by the detaining authority while passing the order of detention, copy of the same must have been furnished to the detenu along with the grounds or in any event not later than 5 days and in the exceptional circumstances for reasons to be recorded in writing not later than 15 days from the date of his detention. It is also clear that all such materials must be furnished to him in the language which he understands and the failure to do either of the two things would amount to breach of the two duties cast on the detaining authority under Article 22 (5) of the Constitution. In the case before us, the paper book supplied to the detenu does not contain copy of the remand extension order dated 02.09.2004 either in English or in the language (Telugu) known to the detenu, however the same was supplied both in English and in Telugu version only on 20.10.2004.

7. Though the learned Additional Public Prosecutor contended that copy of the order dated 02.09.2004 was subsequently supplied to the detenu, the said order having been made a day prior to the detention order dated 03.09.2004 and the same having been relied on by the detaining authority, and the relied upon document having been supplied after 38 days, which is beyond the prescribed period, in the light of the principles laid down in Ibrahim Ahmad Batti case, the detention order has to be quashed on the ground of violation of safeguards contained in Article 22 (5) of the Constitution. Since we accept the first contention, it is unnecessary for us to go into the second contention.

In the light of what is stated above, the impugned detention order dated 03.09.2004, is liable to be set aside; accordingly, the same is set aside and the detenu is directed to

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be set at liberty forthwith from custody unless he is required in connection with any other case or cause.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government
   State of Tamil Nadu
   Public (SC) Department
   Fort St. George
   Chennai 9.

2. The Secretary to Govt.
   Union of India
   Ministry of Finance
   Department of Revenue
   (COFEPOSA Unit)
   Central Economic Intelligence Bureau
   Janpath Bhavan, Janpath
   New Delhi 110 001.

3. The Superintendent of Central Prison
   Central Prison, Chennai 3.

4. The Public Prosecutor, Madras.

5. The Joint Secretary to Govt.,
   Public (Law and Order), Dept.,Chennai-9.

6. The Sub-Assistant Registrar,
   COFEPOSA, High Court, Madras.

+ One cc to Mr.K.A. Jabbar, Advocate (SR 15974)

Order in
HCP.No.1231 of 2004

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